(3)

No. 97-355

Supreme Court, U.S.
FILED
NOV 13 1997
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

MICHAEL LEE FINERTY, et al.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

GLENN M. TAUBMAN
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

ATTORNEY FOR PETITIONERS

November 13, 1997

4pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-355

MICHAEL LEE FINERTY, et al.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD

Respondent.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

The brief of the National Labor Relations Board ("Board") hides the actual — and most egregious — effect of the decision below: American workers in the private sector are now required to support collective bargaining in foreign nations and among public sector employees, if that is what the union chooses to do with its compulsory dues. (Board Brief in Opposition to the Petition ("Opp.") at 10).

The Board specifically permits CWA to "pool" resources across all bargaining unit lines "whether the contributing units are in the same industry in the same State, in different industries in Canada and the United States, or in different States with different collective bargaining laws within the United States." (Opp. 10). Thus, the Board's decision erases the concept of "bargaining units" from the NLRA (at least where compulsory dues seizures are involved), and removes virtually all limits on CWA's ability to force compulsory support of collective activities in foreign

countries and in public sector bargaining units — no matter how unrelated those activities are to Petitioner Finerty's Pacific Bell/Nevada Bell bargaining unit.[1] But in passing the NLRA, Congress could not possibly have intended this result, which cries out for the exercise of this Court's supervisory authority.

In reaching a result that forces Americans working in the private sector to subsidize foreign and public sector bargaining units — or be discharged — the Board ignores the fact that the NLRA has no extra-territorial effect; coverage is limited to domestic employers and employees in discrete and identified bargaining units. *See, e.g.*, 29 U.S.C. § 152 (2), (3) and (6). Simply stated, foreign employees and public sector employees are not covered by the NLRA, and they are certainly not entitled to largesse seized from the salaries of unwilling American workers under color of that statute.

Thus, the Board ignores this Court's decisions holding that the NLRA does not regulate labor relations in foreign nations, *e.g.*, the working conditions of foreign employees on foreign vessels which are temporarily present in an American port, *McCullough v. Sociedad Nacional de Marineros*, 372 U.S. 10 (1963), or picketing by an American labor union at an American port where such picketing is aimed at altering the employment relationship between owners of foreign vessels and foreign seamen. *American Radio Ass'n v. Mobile S.S. Ass'n*, 419 U.S. 215 (1974); *Windward Shipping (London) v. American Radio Ass'n*, 415 U.S. 104 (1974); *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 142-46 (1957). *See also International Longshoremen's Ass'n v. NLRB*, 56 F.3d 205, 210 (D.C. Cir. 1995); *Dowd v. International Longshoremen's Ass'n*, 781 F.

---

[1] Disingenuous — if not completely false — is the argument in Opp. 10, n. 3, that "the dues paid to the CWA by the PacificBell/Nevada Bell bargaining unit are assessed for that bargaining unit's protection, not for the purpose of organizing employees in Canada or influencing the course of bargaining in the CWA's Canadian units." The Board's decision specifically permits the CWA to pool all of its resources across all unit lines, without regard to nationality or labor laws. Thus, the dues that Pacific Bell/Nevada Bell employees pay into the CWA's "pool" can be used to "protect" Canadian and public sector bargaining units just as much as they "protect" the Pacific Bell/Nevada Bell unit.

Supp. 1565 (M.D. Fla. 1991), *aff'd*, 975 F.2d 779 (11th Cir. 1992).

Moreover, the Board's decision goes far beyond anything contemplated by this Court in *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1990). Although this Court in *Lehnert* upheld the chargeability of some extra-unit expenditures, it was careful to require some direct relationship between the objecting nonmembers' bargaining unit and the union's extra-unit expenditures.

> This conclusion, however, does not serve to grant a local union *carte blanche* to expend dissenters' dollars for bargaining activities wholly unrelated to the employees in their unit.... There must be some indication that the payment is for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.

500 U.S. at 524.

But the Board did not feel similarly constrained, even though there is nothing in CWA's representation of Canadian and public sector bargaining units that can ever "inure to the benefit" of Michael Finerty and his Pacific Bell/Nevada Bell bargaining unit. Indeed, there is not a scintilla of evidence in the extensive stipulated record which even hints at the notion that CWA's efforts in these diverse bargaining units has any impact upon the bargaining units covered by the NLRA, such as the Pacific Bell/Nevada Bell unit. Under these circumstances, CWA's expenditures in unrelated foreign and public sector bargaining units are more akin to the "donation[s] or interest-free loan[s]" that were declared nonchargeable in *Lehnert* than to the extra-unit "affiliation" activities found to be chargeable. 500 U.S. at 523-24.

CONCLUSION

The decision of the Board is erroneous as a matter of law, because it achieves a result that Congress never intended: millions of Americans covered by the NLRA are consigned to support collective bargaining in units not covered by the NLRA, including foreign and public sector units. This Court should grant the Petition and schedule this case for full briefing and argument.

Respectfully submitted,

Glenn M. Taubman
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

Attorney for Petitioners

November 13, 1997